

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
 )  
Billing and Collection Services ) RM-9108  
Provided By Local Exchange )  
Carriers for Non-Subscribed )  
Interexchange Services )

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

COMMENTS OF  
THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association ("CompTel")<sup>1</sup>, by its attorneys, hereby submits these Comments in support of the Petition for Rulemaking filed by MCI Telecommunications Corporation ("MCI") that is captioned above ("Petition").

**I. Introduction**

In its Petition, MCI asks the Commission to begin a proceeding to adopt rules governing the provision of billing and collection services provided by local exchange carriers ("LECs") to long-distance companies that offer interexchange services to end-users on a non-subscribed basis. According to MCI, the continued availability of non-subscribed services such as collect calling, 10XXX, third-party calls, LEC "joint use" calling cards, and 900 services is in question, because various LECs have stated that they will no longer provide billing and collection for these services when provided by unaffiliated long-distance carriers. MCI believes that these threats are motivated by the LECs' desire to eliminate competition from the market for non-subscribed services. As MCI states in its Petition, few alternative means of billing and collection for non-subscribed services are available today. Accordingly,

<sup>1</sup> CompTel is an industry association that represents over 200 providers of competitive telecommunications services.

MCI requests that the Commission adopt competitive safeguards that would apply to all LECs until the long-distance carrier industry can develop alternative billing and collection mechanisms. As shown below, CompTel supports MCI's requests and urges the Commission to grant MCI's Petition by adopting a Notice of Proposed Rulemaking ("NPRM") as proposed.

**II. Competitive Safeguards for Billing and Collection Would Promote the Public Interest.**

**A. Title I of the Act gives the FCC the authority it requires to adopt the rules proposed by MCI.**

Without question, the Commission has the jurisdiction to regulate billing and collection services provided by LECs to long-distance carriers for non-subscribed services, and thus to adopt the rules proposed by MCI.

As MCI notes in its Petition, it is well established that the FCC has ancillary jurisdiction under Title I of the Act over these services. Section 2(a) of the Act gives the Commission broad authority over all "interstate communication...by wire or radio," which Sections 3(a) and (b) define to include not only the transmission of information, but "all instrumentalities, facilities, apparatus, and services...incidental to such transmission." In Detariffing of Billing and Collection Services,<sup>2</sup> the Commission found that this grant of power gives it sufficient authority to regulate exchange carrier provision of billing and collection services to interexchange carriers. The Commission reaffirmed this finding in subsequent decisions.<sup>3</sup>

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<sup>2</sup> Detariffing of Billing and Collection Services, 102 FCC 2d 1150, 1169 (1986).

<sup>3</sup> See, e.g., Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, Notice of Proposed Rulemaking, 6 FCC Rcd 3506, 3509 (1991) ("BNA First Notice"), aff'd. Capital Network System, Inc. v. FCC, 3 F.3d 1526

The FCC has regulated LEC billing and collection services where certain features or functions have not been offered competitively by other providers of billing services or have had potential "bottleneck" attributes. For example, in Detariffing of Billing and Collection Services, the Commission required LECs to continue to offer "recording" service to all long-distance carriers upon reasonable request and on reasonable terms for a two-year transition period.<sup>4</sup> The Commission's focus in these cases has been to adopt "reasonable, limited measures designed to ensure reasonable rates for interstate carriers that purchase LEC billing and collection services and for the consumers of their interstate communications services."<sup>5</sup>

**B. Consumers will be forced to pay higher rates and will have fewer choices for non-subscribed services unless the FCC adopts competitive safeguards as proposed by MCI.**

The exercise of ancillary jurisdiction requires a record finding that such regulation is directed at protecting or promoting a statutory purpose.<sup>6</sup> Adoption of the rules proposed by MCI regarding LEC provision of billing and collection services to long-distance carriers would promote the basic purpose for which the Commission was created: "to make available, so far as possible, to all people of the United States a rapid, efficient, nationwide,

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(D.C. Cir. 1993) ("CNSI v. FCC"); P.S.C. of Md., 4 FCC Rcd 4000, 4004-4005 (1989).

<sup>4</sup> P.S.C. of Md., 4 FCC Rcd at 4005, citing Detariffing of Billing and Collection Services, 102 FCC 2d at 1174; see also Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, Third Order on Reconsideration, 11 FCC Rcd 6835 (1996) ("BNA Third Reconsideration Order") (LECs required to make billing name and address information available to long-distance carriers and other billing vendors).

<sup>5</sup> P.S.C. of Md., 4 FCC Rcd at 4006.

<sup>6</sup> Detariffing of Billing and Collection Services, 102 FCC 2d at 1170, citing Second Computer Inquiry, 77 FCC 2d 384, 433 (1979), aff'd on reconsideration, 80 FCC 2d 50, 92-93 (1980), 88 FCC 2d 512 (1981), aff'd sub nom. CCIA v. FCC, 693 F.2d, 198 (D.C. Cir. 1982), cert. denied sub nom. Louisiana P.S.C. v. United States, 461 U.S. 938 (1983).

and worldwide wire and radio communication service with adequate facilities at reasonable charges..."<sup>7</sup> As discussed below, this conclusion is readily apparent once the realities of today's rapidly evolving telecommunications market are taken into consideration.

First, as MCI discussed in its Petition, there is a growing market for non-subscribed services. This is particularly the case with 10XXX or "casual" calling. It has been estimated that "dial around" companies have taken as much as 2.5 percent of the \$80 billion long distance market in just two years.<sup>8</sup> It is clear from the growth of non-subscribed services in recent years that the public wants these services and thus that the continued availability of these services at reasonable prices serves the public interest.

Second, competition in the market for billing and collection services has evolved much more slowly than the Commission anticipated. Despite the Commission's assertion in Detariffing of Billing and Collection Services that AT&T would be in a position to perform its own billing by early 1987,<sup>9</sup> the fact remains that AT&T did not introduce direct billing for its own long distance services until early 1996, nine years later than anticipated by the Commission.<sup>10</sup> While third-party sources of billing and collection services are beginning to develop, such competition is still in the nascent stage. With more service providers entering the US market, industry analysts expect the demand for billing services and software to rise rapidly and thus for the market for alternative billing services to grow

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<sup>7</sup> 47 U.S.C. §151.

<sup>8</sup> John J. Keller, "Coy Telecom Giant Woos AT&T Customers," THE WALL STREET JOURNAL, April 15, 1997, at B1.

<sup>9</sup> Detariffing of Billing and Collection Services, 102 FCC 2d at 1172.

<sup>10</sup> Shira McCarthy, "AT&T Resurrects Its Billing Program," TELEPHONY, Jan. 8, 1996, at 20 ("TELEPHONY Article"). AT&T's initial roll-out of direct billing covered only 500,000 customers in three states.

quickly in the next few years.<sup>11</sup> The bottom line for today, however, is that alternatives for long-distance carriers are limited.

Finally, the evolution of the telecommunications industry has created billing and collection headaches for the long-distance carriers. MCI states in its Petition that various LECs are proposing to increase significantly their charges for billing and collection services or to terminate their billing and collection agreements altogether in an "across-the-board" fashion for the long-distance carriers. Such proposals are not altogether surprising. With the LECs entering or primed to enter the long distance market, it is only logical that these carriers would not want to sell services to unaffiliated long-distance companies that would help those companies compete.

Thus, long-distance carriers today are caught in a dilemma that will inevitably result in higher rates or fewer service offerings for consumers unless the Commission intervenes. As LECs prepare to enter the long distance market, they have less and less incentive to provide billing and collection services to competing companies for non-subscribed services on reasonable terms and conditions. Yet alternative means of billing and collecting for these services are not adequately developed at this time. Thus, while demand for non-subscribed services is growing, the risk of unbilled and uncollectible charges is growing as well. As the risk of fraud and loss in the provision of non-subscribed services increases for long-distance carriers, these carriers will be forced to increase the rates they charge to consumers for non-subscribed services or stop offering these products altogether. Clearly under these circumstances, intervention on the part of the Commission is necessary

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<sup>11</sup> William Schaff, "Complex Telecom Field Means Feisty Billing Market," INFORMATION WEEK, July 7, 1997, at 94.

to ensure achievement of the Commission's statutory obligation to make "communication service with adequate facilities" available to all people "at reasonable charges."<sup>12</sup>

**C. MCI's proposed rules are reasonable and can be phased out as billing and collection alternatives develop.**

MCI's proposal to require LECs to offer billing and collection service for non-subscribed services on a non-discriminatory basis is a "reasonable, limited measure" as appropriate under Title I of the Act. As MCI notes in its Petition, MCI is not asking the Commission to reregulate billing and collection services under Title II. Indeed, MCI's proposed rules would not stop any LEC from exiting the market for billing and collection services altogether. Rather, MCI is simply asking that the playing field be kept level for all long-distance carriers until suitable alternatives develop. MCI's proposed rules would ensure that as the LECs prepare to enter the market for long distance services and compete in this market with established long-distance carriers, they are not able to use their control of a "bottleneck" service — billing and collection services for non-subscribed services — to disadvantage unaffiliated long-distance carriers.

There is every reason to believe that suitable alternatives to LEC billing and collection for non-subscribed services will begin to develop. Just as the possibility of LEC entry into the long distance market decreases the incentives for LECs to provide billing and collection services to their long-distance carrier competitors, so long-distance carrier entry into the local market increases the incentives of long-distance carriers to do their own billing and collecting for their services. In the long run, long-distance carriers will not want to leave billing and collection for any of their services in the hands of their actual or potential

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<sup>12</sup> 47 U.S.C. §151.

competitors.<sup>13</sup> Furthermore, the ability to bill on an integrated basis is vital to the success of one-stop shopping packages, which in turn are expected to be critical for the success of the long-distance carriers moving into the local market. Customer demand for one-stop shopping is expected to be high.<sup>14</sup> As billing alternatives develop, the need for rules ensuring non-discriminatory treatment in billing and collection for non-subscribed services will diminish, and as MCI suggests in its Petition, the rules can be phased out to the extent consistent with the Commission's obligations under the Act.

**D. The Commission's previous refusal to address these issues does not dictate a denial of MCI's Petition.**

CompTel recognizes that the FCC previously rejected calls to commence a rulemaking proceeding that would have considered the very same issues MCI raises in its Petition. In 1991, the Commission denied a petition for rulemaking filed by Capital Network System, Inc. ("CNS") and CompTel insofar as that petition required LECs "which provide billing and collection service to any long-distance carrier, including those which provide operator-assisted services, to make available to all other long-distance carriers billing and collection services, for a just and reasonable charge."<sup>15</sup> The Commission's decision to deny the CNS/CompTel petition for rulemaking does not dictate the same result with respect to MCI's Petition today. While the FCC denied CNS/CompTel's petition on the grounds that CNS/CompTel's arguments "regarding...the degree of competition for the provision of operator-assisted services [did] not demonstrate that billing and collection services are no

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<sup>13</sup> Indeed, some analysts see the ability to bill direct as necessary to the proper positioning of an emerging LEC in the local exchange market. TELEPHONY Article at 20.

<sup>14</sup> "Big Four Carriers Square Off," INFORMATION WEEK, May 5, 1997, at 45.

<sup>15</sup> BNA First Notice, 6 FCC Rcd at 3507.

longer subject to competitive pressures"<sup>16</sup> — a justification that the Court later found to be "no more than...sparse"<sup>17</sup> — the fact remains, as shown above, that competition has not developed in the market for billing and collection services to anywhere near the extent that the Commission envisioned when it adopted its order in Detariffing of Billing and Collection Services in 1986.

Furthermore, the telecommunications industry is very different today than it was in 1991, primarily as a result of the Telecommunications Act of 1996 (the "1996 Act"). LEC entry into the long distance market was not on the horizon in 1991, and it is that prospect of entry into the market for long-distance carrier services that creates the distinct potential for anticompetitive behavior through control of a bottleneck service, *i.e.*, through denial or discriminatory treatment in billing and collection services. Regardless of the circumstances present in 1991, consideration of the issues presented by MCI in its Petition is appropriate at this time.

**III. Adoption of Competitive Safeguards as Proposed by MCI Would Be Consistent with the Requirements of the Telecommunications Act of 1996.**

As MCI observes in its Petition, the 1996 Act provides another basis on which the Commission may regulate the provision of billing and collection services by LECs to long-distance carriers for non-subscribed services. Section 272(c)(1) of the 1996 Act provides that Bell Operating Companies ("BOCs"), in dealing with their long-distance carrier affiliates, "may not discriminate between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or in the

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<sup>16</sup> BNA First Notice, 6 FCC Rcd at 3509.

<sup>17</sup> CNS v. FCC, 3 F.3rd at 1531.



establishment of standards." The FCC has construed "services" as used in this section to include administrative services such as billing and collection that unaffiliated entities may find useful.<sup>18</sup>

In addition, Section 251(g) requires the BOCs to provide billing and collection services to long-distance carriers on a non-discriminatory basis to the same extent required to do so prior to the 1996 Act. Section 251(g) provides that "... each local exchange carrier...shall provide exchange access...in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations...that apply to such carrier on the date immediately preceding the date of enactment of the [1996] Act." The Modification of Final Judgment ("MFJ") requires that "when a BOC [provides] billing services to an interexchange carrier, the BOC may not discontinue local exchange services to any customer because of nonpayment of interexchange carriers unless it offers to provide billing services to all interexchange carriers..."<sup>19</sup> Thus, under Section 251(g) of the 1996 Act, the BOCs must continue to comply with this MFJ requirement.

Given that Sections 272(c)(1) and 251(g) already require the BOCs to offer billing and collection services on a non-discriminatory basis, the net effect of MCI's proposed rules would be merely to extend this requirement to other LECs. The FCC has previously extended rules applicable only to the BOCs to other local exchange carriers. For example, the Commission has extended the MFJ's equal access requirements to independent

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<sup>18</sup> Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, FCC 96-489 (released Dec. 24, 1996) at ¶ 217, pet. for rev. pending sub nom. Bell Atlantic v. FCC, Case No. 97-1067 (D.C. Cir. filed Jan. 31, 1997).

<sup>19</sup> See U.S. v. AT&T Co., 552 F. Supp. 131, 234 (D.D.C. 1982), aff'd sub nom. Md. v. U.S., 460 U.S. 1001 (1983).

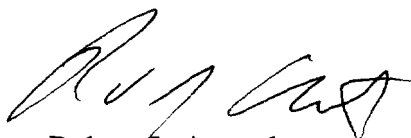
telephone companies,<sup>20</sup> and waived its rules on the computation of switched access transport charges for all LECs because of a conflict for the BOCs between those rules and the MFJ's requirements.<sup>21</sup>

#### IV. Conclusion

For the reasons stated herein, the Commission should grant MCI's Petition for rulemaking and proceed expeditiously to commence a rulemaking proceeding concerning LEC billing and collection for non-subscribed services provided by long-distance carriers.

Respectfully submitted,

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<sup>20</sup> MTS and WATS Market Structure Phase III, Report and Order, 100 FCC 2d 860 (1985).

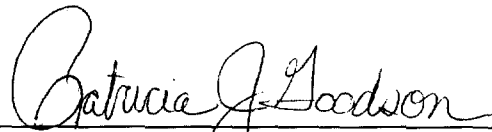
<sup>21</sup> AT&T Co., 94 FCC 2d 545 (1983).

## CERTIFICATE OF SERVICE

I hereby certify that true and copies of the foregoing Comments of Competitive Telecommunications Association were served July 25, 1997, by U.S. mail, postage prepaid, to the following:

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